

Message Text

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ORIGIN L-03

INFO OCT-01 ARA-16 IO-14 ISO-00 OMB-01 TAR-02 SPC-03

AGR-20 AID-20 CIAE-00 COME-00 EB-11 INR-10 LAB-06

NSAE-00 OIC-04 RSC-01 SIL-01 STR-08 TRSE-00 CIEP-02

CEA-02 AF-10 EA-11 EUR-25 NEA-10 SS-20 NSC-10 /211 R

DRAFTED BY L:SMSCHWEBEL

APPROVED BY ARA/LA:JBKUBISCH

L - MR. FELDMAN

IO - AMBASSADOR POPPER

IO - DR. MOREY

EB/OT/GCP - MR. PRICKETT

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FM SECSTATE WASHDC

TO USMISSION USUN NEW YORK PRIORITY

INFO AMEMBASSY MEXICO PRIORITY

C O N F I D E N T I A L STATE 217473

E.O. 11652: GDS

TAGS: UNCTAD, UNGA, MX, UNIDO, ECOSOC

SUBJECT: CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

REFS: (A) USUN 4345; (B) USUN 4347; (C) USUN 4353

1. WE UNDERSTAND FROM CONVERSATION OF ASSISTANT SECRETARY KUBISCH WITH FOREIGN MINISTER RABASA THAT MEXICO IS OPEN TO AND WILL IN FACT ENDEAVOR TO PROMOTE AN EXPRESSION OF CONSENSUS BY THE RAPPORTEUR OF THE SECOND COMMITTEE TO THE EFFECT THAT THE CHARTER OF ECONOMIC RIGHTS AND DUTIES IS TO BE A DECLARATION NOT BINDING IN OR DECLARATORY OF INTERNATIONAL LAW BUT RATHER A DECLARATION SETTING FORTH STANDARDS OF CONDUCT, SUCH AS THE UNIVERSAL DECLARATION OF HUMAN RIGHTS. THIS SCENARIO HOPEFULLY WILL UNFOLD NOV. 5, WHEN MEXICAN RES. ON CHARTER COMES TO A VOTE.

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USDEL WILL NATURALLY WISH TO COOPERATE FULLY WITH MEXICAN

DEL TO THIS END.

2. HOWEVER, IF, ON ADOPTION OF RES. ON CHARTER IN SECOND COMITE, SATISFACTORY STATEMENT ON THE NON-BINDING CHARACTER OF THE CHARTER IS NOT MADE AND ACCEPTED BY CONSENSUS, THEN REQUEST YOU TO MAKE FOLLOWING STATEMENT IN EXPLANATION OF U.S. VOTE. STATEMENT SHOULD BE FRAMED WITH POSITIVE INTRODUCTORY AND CONCLUSORY STATEMENTS THAT EMPHASIZE SERIOUSNESS OF PURPOSE AND CONSTRUCTIVE APPROACH WHICH U.S. TAKES TOWARDS DRAFTING OF CHARTER. IF FOR ANY REASON THIS

STATEMENT IS NOT MADE IN COMMITTEE, BUT SATISFACTORY CONSENSUS IS NOT ADOPTED, THEN THIS STATEMENT SHOULD BE MADE WHEN THE RES. IS ADOPTED IN PLENARY.

3. TEXT OF STATEMENT:

"THE UNITED STATES IS PROFOUNDLY PLEASED TO VOTE IN FAVOR OF THE RESOLUTION INTRODUCED BY THE DISTINGUISHED DELEGATE OF MEXICO AND HIS COLLEAGUES. WE LOOK FORWARD TO THE EARLY RESUMPTION OF THE WORK OF THE WORKING GROUP, AND TO THE EARLY PROGRESS OF THAT WORK. AS THE UNITED STATES HAS INDICATED, IT SEES THE CHARTER AS OFFERING OCCASION FOR AN HISTORIC CONTRIBUTION TO THE PROCESS OF INTELLECTUAL INTEGRATION OF THE APPROACHES OF DEVELOPING AND INDUSTRIALIZED COUNTRIES TO THE PARAMOUNT PROBLEM OF ACHIEVING WIDER PROSPERITY FOR ALL MANKIND. IT SEES THE CHARTER AS OFFERING THE OCCASION FOR A UNIVERSAL DECLARATION OF THE HUMAN RIGHT OF MANKIND TO ECONOMIC PROGRESS, WHICH WOULD PARALLEL IN ITS SPHERE THE BROADER AND MOST INFLUENTIAL DECLARATION OF HUMAN RIGHTS ADOPTED BY THIS GENERAL ASSEMBLY A QUARTER OF A CENTURY AGO.

IN OUR VIEW, THE MODEL FOR THIS ENDEAVOR SHOULD BE THE UNIVERSAL DECLARATION OF HUMAN RIGHTS. LIKE THAT DECLARATION, THIS CHARTER WILL SAY MUCH LESS THAN IT MIGHT IF WHAT IT DOES SAY IS REGARDED AS A CODIFICATION OF NORMS OF INTERNATIONAL LAW. THERE IS RELATIVELY

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LITTLE EXISTING INTERNATIONAL LAW TO CODIFY ON MANY OF THE ISSUES UNDER DISCUSSION IN THE WORKING GROUP. ACCORDINGLY, THE ENDEAVORS OF THE WORKING GROUP WILL BE PROMOTED IF THERE IS AN EARLY CONSENSUS TO THE EFFECT THAT THE CHARTER WILL NOT BE AN INSTRUMENT DECLARATORY OF INTERNATIONAL LAW. IN VOTING FOR THE RESOLUTION INTRODUCED BY MEXICO AND ITS CO-SPONSORS, THE UNITED STATES ACCORDINGLY WISHES TO MAKE CLEAR ITS VIEW THAT

THE RESOLUTION DOES NOT DO TWO THINGS. FIRST, IT QUITE OBVIOUSLY DOES NOT COMMIT US TO APPROVING THE TERMS OF THE CHARTER, SINCE THOSE TERMS ARE AS YET UNKNOWN. SECOND, IT DOES NOT COMMIT US TO TREATING THE CHARTER, WHEN ADOPTED, AS AN INSTRUMENT THAT IS A LEGALLY BINDING DECLARATION OR AN INSTRUMENT EXPRESSIVE OF INTERNATIONAL LEGAL OBLIGATIONS. THIS RESOLUTION SPEAKS OF "NORMS", WHICH THE UNITED STATES INTERPRETS AS MEANING "PRINCIPLES" OR "STANDARDS". IT SPEAKS OF THE CHARTER AS A "FIRST STEP" IN "CODIFICATION" AND OF "DEVELOPMENT" THOSE TERMS, AS USED IN ARTICLE 13 OF THE CHARTER, REFER TO INTERNATIONAL LAW. BUT, AS USED IN THIS RESOLUTION, THEY DO NOT, IN THE VIEW OF

THE UNITED STATES DELEGATION, IMPORT A DECLARATION THAT WILL BE BINDING IN INTERNATIONAL LAW. AS THE DISTINGUISHED DELEGATE OF MEXICO HAS STATED, THE EFFECT OF RESOLUTIONS OF THE GENERAL ASSEMBLY IS A COMPLEX QUESTION. BUT ONE ESSENTIAL POINT IS CLEAR: THAT IF THE ASSEMBLY, AND ITS MEMBERS, DO NOT WISH A RESOLUTION TO BE IN THE EXCEPTIONAL CATEGORY OF ONE EXPRESSING INTERNATIONAL LEGAL OBLIGATIONS, SUCH A RESOLUTION IS NOT IN THAT CATEGORY. IT WILL BE WITH THIS FACT IN MIND THAT THE U.S. WILL APPROACH DRAFTING OF THE CHARTER AND IT IS WITH THE MOST CONSTRUCTIVE SPIRIT OF POSITIVE ACHIEVEMENT THAT THE U.S. WILL APPROACH THE CHARTER'S CONCLUSION." END OF STATEMENT.

4. KUBISCH AGAIN DISCUSSED U.S. INTENTIONS OUTLINED ABOVE WITH FONSEC RABASA AT MIDDAY TODAY (NOV. 3) DURING LATTER'S BRIEF VISIT TO WASHINGTON. RABASA EXPRESSED HOPE THAT U.S. STATEMENT MIGHT NOT BE REQUIRED BUT ALSO EXPRESSED UNDERSTANDING OF WHY WE WOULD WANT TO MAKE IT CONFIDENTIAL

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IF HIS CONSENSUS SCENARIO DID NOT MATERIALIZE. RABASA ESPECIALLY ASKED THAT WE SUPPORT MEXICO AND OTHERS NEXT WEEK IN CALLING FOR A "FINAL DOCUMENT" FROM WORKING GROUP SO AS TO AVOID POSSIBLE PROCRASTINATION AND DELAYING TACTICS DURING 1974. KISSINGER

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